



AN ACT REVISING LAWS RELATED TO INDEPENDENT CONTRACTOR TAX EVASION AND FRAUD; CLARIFYING BUSINESS PRACTICES FOR CONSTRUCTION CONTRACTORS WHO HIRE INDEPENDENT CONTRACTORS; REVISING INDEPENDENT CONTRACTOR VIOLATION PENALTIES; REQUIRING THE DEPARTMENT OF LABOR AND INDUSTRY TO ORDER AN UNINSURED EMPLOYER TO CEASE OPERATIONS; AMENDING SECTIONS 39-9-301, 39-71-419, AND 39-71-507, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-9-301, MCA, is amended to read:

"39-9-301. Business practices -- penalty. (1) Except as provided in 39-9-205, a person who has registered under one name as provided in this chapter may not engage in the business or act in the capacity of a construction contractor or a home inspector under any other name unless that name also is registered under this chapter.

(2) Use of a falsified registration number in connection with a solicitation or identification as a construction contractor or a home inspector is prohibited.

(3) A partner, associate, agent, salesperson, solicitor, officer, or employee of a construction contractor or a home inspector shall use a true name and address at all times while engaged in the business or capacity of a construction contractor or a home inspector or in activities related to a construction contractor or a home inspector.

(4) A construction contractor may not:

(a) hire a person as an independent contractor who does not have an independent contractor exemption certificate if required by 39-71-417;

(b) hire a person as an independent contractor if the department has suspended, revoked, or

denied the person's independent contractor's exemption certificate;

(c) hire an independent contractor to work in a trade, business, occupation, or profession not listed on the independent contractor's registration;

(d) allow an independent contractor to perform work not in the trade, business, occupation, or profession listed on the independent contractor exemption certificate; or

(e) classify an employee as an independent contractor if the person does not have an independent contractor exemption certificate required by 39-71-417.

~~(4)~~(5) (a) The finding of a violation of this section by the department at a hearing held in accordance with the Montana Administrative Procedure Act subjects the person who commits the violation to a penalty of not more than \$5,000, as determined by the department. The required hearing may be held by telephone or by videoconference. A penalty collected under this section must be deposited in the state special revenue account to the credit of the department for administration and enforcement of this chapter.

(b) Penalties under this section do not apply to a violation that is determined to be an inadvertent error."

Section 2. Section 39-71-419, MCA, is amended to read:

"39-71-419. Independent contractor violations -- penalty. (1) A person may not:

(a) perform work as an independent contractor without first:

(i) obtaining from the department an independent contractor exemption certificate unless the individual is not required to obtain an independent contractor exemption certificate pursuant to 39-71-417(1)(a);

or

(ii) electing to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3;

(b) perform work as an independent contractor when the department has ~~revoked~~ suspended, revoked, or denied the independent contractor's exemption certificate;

(c) transfer to another person or allow another person to use an independent contractor exemption certificate that was not issued to that person;

(d) alter or falsify an independent contractor exemption certificate; or

(e) misrepresent the person's status as an independent contractor. A person who falsely claimed, either in writing or through credible evidence, to have an independent contractor certification may not be considered to be an employee solely based on not actually having an independent contractor exemption certificate. The burden of proof that an independent contractor is certified rests with the independent contractor and not the hiring entity.

(2) An employer may not:

(a) require an employee through coercion, misrepresentation, or fraudulent means to adopt independent contractor status to avoid the employer's obligations to provide workers' compensation coverage; or

(b) exert control to a degree that causes the independent contractor to violate the provisions of 39-71-417(4).

(3) (a) In addition to any other penalty or sanction provided in this chapter, a person or employer who violates a provision of this section is subject to a fine to be assessed by the department of up to \$1,000 \$5,000 for each violation as follows:

(i) up to \$1,000 for the first violation, of which up to \$1,000 may be waived if the person or employer completes a department-directed education program;

(ii) up to \$2,500 for the second violation;

(iii) up to \$5,000 for the third violation;

(iv) \$5,000 for the fourth and each subsequent violation. In addition to the fine, the department shall suspend or revoke the person's independent contractor exemption certificate and report the person to the workers' compensation fraud investigation and prosecution office provided for in 2-15-2015.

(b) The department shall deposit the fines in the uninsured employers' fund. The lien provisions of 39-71-506 apply to any assessed fines.

(4) A person or employer who disputes a fine assessed by the department pursuant to this section may file an appeal with the department within 30 days of the date on which the fine was assessed. If, after mediation, the issue is not resolved, the issue must be transferred to the workers' compensation court for resolution."

Section 3. Section 39-71-507, MCA, is amended to read:

"39-71-507. Department to order uninsured employer to cease operations -- noncompliance with order a misdemeanor -- coordination of remedies. (1) When the department discovers an uninsured employer, it shall order the employer to cease operations until the employer has elected to be bound by a compensation plan.

(2) When the department discovers a person, business, or other entity functioning as a prime contractor that has subcontracted for the services of an uninsured employer, it ~~may~~shall order the person, business, or other entity functioning as a prime contractor to cause all operations performed by the uninsured employer to cease at worksites controlled by the prime contractor until the uninsured employer has elected to be bound by a compensation plan. If after 3 business days following the order by the department the person, business, or other entity functioning as a prime contractor has not complied with the order, the department may order the prime contractor to cease all operations at the affected worksites.

(3) An employer who does not comply with the department's order to cease operations is guilty of a misdemeanor. Each day of violation is a separate offense. The county attorney may prosecute a criminal action under this subsection in the county in which the violation occurs. Prosecution under this subsection does not bar the department from enforcing its order by a civil action.

(4) A person, business, or other entity functioning as a prime contractor that does not comply with the department's order to cease all operations is guilty of a misdemeanor. Each day of violation is a separate offense. The county attorney may prosecute a criminal action under this subsection in the county in which the violation occurs. Prosecution under this subsection does not bar the department from enforcing its order by a civil action. In addition, the department may assess a penalty against the person, business, or other entity functioning as a prime contractor of not more than \$1,000 per day for each day of violation.

(5) The department may institute and maintain in the name of the state, through the attorney general or the county attorney of the county in which the violation occurs, an action for an injunction order or other civil remedy in district court to enforce its order to cease operations.

(6) The remedies provided in 39-71-506 and subsections (3) through (5) of this section are not mutually exclusive and may be pursued concurrently."

Section 4. Effective date. [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,
HB 490, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2023.

President of the Senate

Signed this _____ day
of _____, 2023.

HOUSE BILL NO. 490

INTRODUCED BY S. GIST, M. MALONE, J. COHENOUR, S. ESSMANN, J. HINKLE, S. GALLOWAY, R.
MARSHALL, R. MINER, B. PHALEN, L. DEMING

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